

Regular Session, 2012

SENATE BILL NO. 422

BY SENATOR CLAITOR

ADMINISTRATIVE PROCEDURE. Provides relative to legislative review of emergency rules or fees. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 49:953(B)(1) and (4)(a), relative to the Administrative Procedure
3 Act; to provide for legislative review of emergency rules or fees; and to provide for
4 related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 49:953(B)(1) and (4)(a) are hereby amended and reenacted to read
7 as follows:

8 §953. Procedure for adoption of rules

9 * * *

10 B.(1)(a) If an agency finds that an imminent peril to the public health, safety,
11 or welfare requires adoption of a rule upon shorter notice than that provided in
12 Subsection A of this Section and within five days of adoption states in writing to the
13 governor of the state of Louisiana, the attorney general of Louisiana, the speaker of
14 the House of Representatives, the president of the Senate, and the Department of the
15 State Register, its reasons for that finding, it may proceed without prior notice or
16 hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt
17 an emergency rule. The provisions of this Paragraph also shall apply to the extent

1 necessary to avoid sanctions or penalties from the United States, or to avoid a budget
2 deficit in the case of medical assistance programs or to secure new or enhanced
3 federal funding in medical assistance programs. The agency statement of its reason
4 for finding it necessary to adopt an emergency rule shall include specific reasons
5 why the failure to adopt the rule on an emergency basis would result in imminent
6 peril to the public health, safety, or welfare, or specific reasons why the emergency
7 rule meets other criteria provided in this Paragraph for adoption of an emergency
8 rule.

9 **(b) The agency statement required in Subparagraph (a) of this**
10 **Paragraph shall be submitted to the speaker of the House of Representatives**
11 **and the president of the Senate at their respective office in the state capitol by**
12 **certified mail with return receipt requested or by messenger who shall provide**
13 **a receipt for signature. The return receipt or the messenger's receipt shall be**
14 **proof of receipt of the statement.**

15 * * *

16 (4)(a) Within sixty days after **receipt of the agency statement required in**
17 **Paragraph (1) of this Subsection by the presiding officer of either house** adoption
18 of ~~for~~ an emergency rule or fee, an oversight subcommittee of ~~either~~ **that** house may
19 conduct a hearing to review the emergency rule or fee and make a determination of
20 whether such rule or fee meets the criteria for an emergency rule or fee as provided
21 in Paragraph (1) of this Subsection and those determinations as provided in R.S.
22 49:968(D)(3). If within such time period an oversight subcommittee finds an
23 emergency rule or fee unacceptable, it shall prepare a written report containing a
24 copy of the proposed rule or proposed fee action and a summary of the
25 determinations made by the committee and transmit copies thereof as provided in
26 R.S. 49:968(F)(2).

27 * * *

28 Section 2. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
3 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

Present law, relative to the adoption of emergency rules or fees under the Administrative Procedure Act, provides that if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than otherwise required and within five days of adoption states in writing to the governor, the attorney general, the House speaker, the Senate president, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule.

Present law provides that within 60 days after adoption of an emergency rule or fee, an oversight subcommittee of either house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee, whether the rule or fee is in conformity with the intent and scope of the enabling legislation purporting to authorize its adoption; whether the rule or fee is in conformity and not contrary to law and the constitution; the advisability or relative merit of the rule or fee; and whether the rule or fee is acceptable or unacceptable. If within that time period an oversight subcommittee finds an emergency rule or fee unacceptable, the subcommittee shall prepare a written report containing a copy of the proposed rule or fee action and a summary of the determinations made by the committee and transmit copies to the governor, the agency, and the Louisiana Register no later than four days after the committee makes its determination.

Proposed law requires that the agency submit the written reasons to the House speaker and the Senate president at their respective office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. Provides that the return receipt or the messenger's receipt is proof of receipt.

Proposed law permits a subcommittee hearing within 60 days after receipt of an agency statement by the Senate president, or the House speaker, as the case may be. Otherwise retains present law.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 49:953(B)(1) and (4)(a))